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A

Rajamorgan a/l Marimuthu v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–282–10 OF 2011
ABDUL MALIK ISHAK, AZAHAR MOHAMED AND ZAWAWI SALLEH JJCA
25 APRIL 2014

C

Criminal Procedure — Appeal — Appeal against conviction and sentence — Appeal against decision of High Court — Accused person convicted for charge of murder of child deceased — Sentenced to death — Prosecution's case and conviction of High Court based on circumstantial evidence — Whether there was direct evidence implicating accused in alleged murder of deceased — Whether conviction and sentence safe — Penal Code s 302

D

One Thilagavathy ('SP9') had arranged for the appellant's wife to babysit her son ('the deceased'). As the deceased refused to go to the appellant and his wife, SP9 then sent the deceased to one Kavitha's ('SP8') house to be babysat by one Sathayee ('SP7'). SP9 had told the appellant's wife to check on the deceased as he might be uncomfortable at a stranger's house. The appellant came and took the deceased away. According to SP7, the deceased was seen crying and refused to follow the appellant. SP7 tried to prevent the appellant from taking the deceased away but the appellant told her that he only intended to give him some chocolates and would return him later. When the appellant returned to SP7's house later, the child was seen to be weak and suffered breathing difficulty. The deceased was rushed to the clinic and the appellant and his wife tagged along. Unfortunately, the deceased had died when he was taken to receive treatment at the clinic. In the High Court, the appellant was convicted under s 302 of the Penal Code for the offence of murder and was sentenced to death. Hence, the present appeal against the conviction and sentence of the High Court. The appellant argued that the charge against him was only on the basis of circumstantial evidence and there was no direct evidence implicating the appellant in the alleged murder of the deceased; there was the DNA of a male person found in the nail clipping of the deceased but this was not explained by the prosecution; and that the abdominal and scrotal injuries was consistent with it being caused by a woman's nails but this was unexplained as well.

E F G H I

Held, allowing the appeal and setting aside the conviction and sentence:

(1) The fact that the appellant was last seen with the deceased may have created suspicions of his guilt, but not enough to prove the case against

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him beyond reasonable doubt. Last seen evidence would not by itself necessarily lead to an irresistible inference that the appellant committed the crime unless the same was duly supported by other links in the chain of circumstances evidence unerringly pointing out the guilt of the appellant. It should also be noted that the last seen evidence would only be a relevant evidence to complete the chain of circumstantial evidence. However the conviction could not be solely based on this piece of evidence (see para 27).

(2) The prosecution failed to establish by positive evidence any motive on the part of the appellant to murder the deceased. It was fairly well-settled that while motive did not have a major role to play in cases based on eyewitness account of the incident, it assumed importance in cases that rested entirely on circumstances evidence (see para 28).

(3) Absence of motive in this case was clearly a matter to be taken into account by the court. In so far as motive is concerned, SP9's evidence was much in favour of the appellant. She said that the appellant and his wife were very fond of the deceased and had expressed their desire to adopt the deceased. SP9 also stated that there were instances in which the appellant had helped her to send the deceased to seek medical treatment at the local clinic. The fact that he rushed the deceased to the clinic would neutralise any suggestion that he personally want the deceased dead (see para 28).

(4) It was the prosecution's contention that the appellant allegedly stomped on the deceased. However, there was no evidence of the appellant's footprints on the deceased's clothing. The police also did not retrieve any soil or bitumen from the crime scene to connect or implicate the appellant (see para 29).

(5) The prosecution's case was hampered with the existence of the DNA belonging to the 'unknown female' found in the deceased's fingernail clippings. There was no attempt by the prosecution to explain the presence of the female DNA profile. The circumstantial evidence relied upon by the prosecution coupled with the presence of female DNA profile, gave rise to a reasonable inference that the appellant might not be the perpetrator and a female could have injured the deceased. Furthermore, at any rate the chain of circumstantial evidence in this case was not so complete as to lead to the hypothesis of guilt of the appellant (see para 30–32).

[Bahasa Malaysia summary

Seorang yang bernama Thilagavathy ('SP9') telah mengaturkan agar isteri perayu untuk menjaga anak lelakinya ('si mati'). Oleh kerana si mati enggan dihantar kepada perayu dan isterinya, SP9 kemudiannya menghantar si mati ke rumah Kavitha ('SP8') untuk dijaga oleh seorang yang bernama Sathayee ('SP7'). SP9 telah memberitahu isteri perayu untuk memeriksa si mati kerana

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dia mungkin tidak selesa berada di rumah orang asing. Perayu datang dan membawa si mati. Mengikut SP7, si mati dilihat menangis dan enggan mengikut perayu. SP7 cuba menghalang perayu daripada membawa si mati pergi tetapi perayu memberitahunya yang dia hanya berniat untuk memberi si mati coklat dan akan mengembalikan si mati kemudian. Apabila perayu pulang ke rumah SP7 kemudiannya, kanak-kanak tersebut dilihat lemah dan mengalami kesusahan untuk bernafas. Si mati kemudiannya dikejarkan ke klinik dan perayu dan isterinya ikut bersama. Malangnya, si mati telah meninggal dunia semasa dia dibawa ke klinik untuk menerima rawatan. Di Mahkamah Tinggi, perayu disabitkan di bawah s 302 Kanun Keseksaan untuk kesalahan membunuh dan dijatuhkan hukuman mati. Maka, rayuan ini terhadap sabitan dan hukuman Mahkamah Tinggi. Perayu berhujah bahawa tuduhan terhadapnya hanya berdasarkan keterangan keadaan dan tidak terdapat keterangan terus yang membabitkan perayu dalam pembunuhan si mati yang didakwa tersebut; terdapat DNA seorang lelaki yang didapati di dalam keratan kuku si mati tetapi ini tidak dijelaskan oleh pihak pendakwaan; dan bahawa kecederaan perut dan kemaluannya adalah konsisten dengan ianya dicederakan oleh kuku perempuan tetapi ini juga tidak dijelaskan.

Diputuskan, membenarkan rayuan dan mengenepikan sabitan dan hukuman:

(1) Fakta bahawa perayu yang dilihat kali terakhir bersama si mati mungkin membentuk rasa syak kebersalahannya, tetapi tidak mencukupi untuk membuktikan kes terhadapnya melampaui keraguan munasabah. Keterangan dilihat pada kali terakhir tidak dengan sendirinya membawa kepada inferens tidak dapat ditahan bahawa perayu melakukan jenayah tersebut kecuali ianya disokong oleh penghubung lain dalam rantaian keterangan keadaan secara silap menunjukkan kebersalahan perayu. Ia juga patut diambil kira bahawa keterangan dilihat pada kali terakhir hanya akan menjadi keterangan relevan untuk melengkapkan rantaian keterangan keadaan. Walau bagaimanapun sabitan tidak boleh didasarkan semata-mata atas keterangan ini (lihat perenggan 27).

(2) Pihak pendakwaan gagal untuk membuktikan dengan keterangan positif apa-apa motif oleh pihak perayu untuk membunuh si mati. Adalah ditetapkan dengan adil bahawa sementara motif tidak mempunyai peranan penting dalam kes-kes berdasarkan keterangan saksi mengenai kejadian, ia memegang kepentingan dalam kes-kes yang bersandarkan keseluruhannya ke atas keterangan ikut keadaan (lihat perenggan 28).

(3) Ketiadaan motif dalam kes ini jelas perkara yang perlu diambil kira oleh mahkamah. Setakat motif, keterangan SP9 lebih memihak perayu. Dia menyatakan yang perayu dan isterinya tersangat sayang kepada si mati dan telah menyatakan keinginan mereka untuk mengambil si mati sebagai anak angkat. SP9 juga menyatakan bahawa terdapat keadaan di mana perayu membantu dia menghantar si mati untuk mendapatkan

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rawatan perubatan di klinik tempatan. Fakta bahawa dia mengejarkan si mati ke klinik akan meneutralkan apa-apa cadangan bahawa perayu secara peribadi mengkehendaki si mati mati (lihat perenggan 28).

(4) Adalah hujahan pihak pendakwaan bahawa perayu menghentakkan kakinya ke atas si mati. Walau bagaimanapun, tidak terdapat keterangan mengenai tapak kaki perayu ke atas baju si mati. Polis juga tidak memperolehi apa-apa tanah atau bitumen daripada tempat kejadian jenayah untuk mengaitkan atau membabitkan perayu (lihat perenggan 29).

(5) Kes pihak pendakwaan telah dihalang dengan kewujudan DNA milik 'unknown female' yang didapati di dalam keratan kuku jari si mati. Tidak terdapat percubaan oleh pihak pendakwaan untuk menjelaskan kehadiran profil DNA perempuan tersebut. Keterangan ikut keadaan yang diguna oleh pihak pendakwaan bersama dengan kehadiran profil DNA perempuan tersebut, membangkitkan kepada inferens munasabah bahawa perayu bukan pelakunya dan seorang perempuan boleh mencederakan si mati. Selanjutnya, keterangan ikut keadaan yang dikemukakan oleh perayu dalam kes ini terlalu lemah untuk membawa kepada hipotesis kebersalahan perayu (lihat perenggan 30–32).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Choo Kok Beng v Choo Kok Hoe & Ors [1984] 2 MLJ 165b, PC (refd)
Dato' Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, FC (refd)
Magendran a/l Mohan v PP [2011] 6 MLJ 1; [2011] 1 CLJ 805, FC (refd)
Multar v Lim Kim Chet & Anor [1982] 1 MLJ 184, FC (refd)
PP v Hanif Basree bin Abdul Rahman [2008] 3 MLJ 161, FC (refd)
Rishi Pal v State of Uttarakhand 2013 (2) ACR 147, SC (refd)
Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395, CA (refd)
Yap Boon Thai v PP [2013] 6 MLJ 236, CA (refd)

Legislation referred to

Penal Code s 302

Appeal from: Criminal Trial No MT3–45B-64 of 2010 (High Court, Shah Alam)

Murali Achan a/l PE Achan (Kulasekar a/l Kulasingam with him) (K Kulasekar, Achan & Assoc) for the appellant.
Andi Razalijaya bin A Dadi (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

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Zawawi Salleh JCA (delivering judgment of the court):

THE ANTECEDENTS

[1] This is an appeal against the judgment dated 29 September 2011 passed by the High Court at Shah Alam, Selangor, by which the Court convicted the appellant under s 302 of the Penal Code ('the Code') and sentenced him to death.

[2] The appellant was charged as follows:

> Bahawa kamu, pada 3 Mac 2010 di antara jam 9.40 malam hingga 10.10 malam di Taman Permainan Kanak-kanak Pangsapuri Vista Damansara, Jalan Kenangan, Kampung Sungai Ayu Ara, 47400 Petaling Jaya, di dalam Daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah melakukan pembunuhan dengan niat menyebabkan kematian kepada Haresvarra a/l Karigalan No. KP: 080828-10-2553. Oleh yang demikian, kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[3] Aggrieved, the appellant lodged this appeal to challenge the legality and correctness of the conviction and sentence.

[4] We have heard Mr Murali Achan and Mr Kulasekar, learned counsel appearing for the appellant and Mr Andi Razalijaya A Dadi, learned deputy public prosecutor ('DPP') appearing for the public prosecutor. We have given our thoughtful consideration to the arguments advanced by them. We have also perused the appeal records of this case and closely scrutinised the evidence led by both the parties.

[5] We are mindful that this is a factually based appeal. In the course of the submission before us, the DPP had reminded us the danger of interfering with the finding of facts of the trial judge, who had seen and heard the witnesses.

[6] The basic principle which guides our courts in appeals against findings of fact is trite. An appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence, except in certain very limited circumstances. An appellate court may, however, interfere in a case in which the reasons given by a trial judge are not satisfactory, or where it is clear from the evidence that the trial judge misdirected himself. Where a trial judge misdirects himself or herself and draws erroneous inferences from the facts, an appellate court is in as good a position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts. Where therefore there is an appeal against the finding of facts, the burden upon the appellant is a very heavy one. An appellate court will only interfere if

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it finds that the court of first instance was clearly and blatantly wrong, or, as it is sometimes more elegantly stated, exceeded the generous ambit within which reasonable disagreement is possible (see *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545 (CA); *Multar v Lim Chet & Anor* [1982] 1 MLJ 184 (FC); *Choo Kok Beng v Choo Kok Hoe & Ors* [1984] 2 MLJ 165b).

[7] Having scrutinised the entire evidence adduced before the court, we are of the considered opinion that this is a case in which appellate intervention is warranted. On the facts of the present case it would be unsafe to allow the conviction of the appellant to stand. We are not satisfied that the prosecution had proved its case to the required standard. For that reason we unanimously allowed the appeal and set aside the conviction and sentence passed by the High Court. The appellant was acquitted and discharged. We now give our reasons for so deciding.

FACTS OF THE CASE

[8] Put in a short frame, the facts giving rise to the arrest and eventual conviction of the appellant is that in November 2009, Thilagavathy a/p Krishnamoorthy ('SP9') had arranged the appellant's wife, who was staying at the same flat, as the deceased's babysitter. However, the appellant's wife only took care of the deceased for two weeks. The deceased refused to be sent to the appellant's house and cried and throw tantrum every time his mother attempted to coax him to the babysitter.

[9] Prior to the tragic incident, the appellant and his wife had expressed their desire to adopt the deceased as they did not bear any child of their own.

[10] On 3 March 2010, around 8pm, SP9 went for a job interview. She had sent her child, Haresvarra (deceased) to Kavitha a/p Tamilchelvan's ('SP8') house to be babysitted by Sathayee a/p Mathuveeran ('SP7'). SP7 is the grandmother to SP8.

[11] SP9 had also told the appellant's wife to check on the child as she was concerned that her child might be uncomfortable at a stranger's house.

[12] According to SP7, the deceased played with SP7's great grandchildren, Karthik and a puppy before the appellant came and took the deceased away. The appellant came to her home at 9.45pm.

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[13] SP7 stated that the deceased was seen crying and refused to follow the appellant. SP7 tried to prevent the appellant from taking away the child. The appellant told her that he only intended to give the child some chocolates and would return him later.

[14] When the appellant returned to SP7's house, the child was seen to be weak and suffered breathing difficulty. SP8 and her husband returned to the house and rushed the deceased to a nearby clinic. The appellant and his wife also rushed to the same clinic with SP8.

[15] The deceased was brought to Dr Teo Boon Chin's ('SP6') clinic. According to SP6, the initial examination showed that the child was already dead when taken to receive treatment.

[16] Autopsy on the deceased's body was performed by the pathologists, Dr Karunakaran Mathiharan ('SP4'). He confirmed that the deceased's cause of death was 'shock and haemorrhage due to liver injury'.

[17] It is on the basis of the aforesaid evidence that we shall endeavour to determine the issue canvassed by learned counsel for the appellant.

THE APPEAL

[18] The solitary contention advanced by learned counsel for the appellant on the merits of the case was that the prosecution had ventured to substantiate the charge against the appellant only on the basis of circumstantial evidence. There was no direct evidence implicating the appellant in the alleged murder of the deceased. The physical evidence adduced by the prosecution supports the fact that the deceased was assaulted by another person and not the appellant.

[19] The DNA of the male person found in the nail clipping of the deceased was not attributed to the appellant and the presence of a female person was not explained by the prosecution. The deceased also suffered injuries to his lower abdominal and scrotal area. This scratch abrasion, according to SP4, was consistent with it being caused by a women's nails.

[20] Learned counsel for the appellant emphatically contended that the prosecution has miserably failed to establish the chain of circumstances so as to make it complete and unerringly pointing the appellant with the alleged offence of the murder of the deceased. Therefore, the appellant is entitled to an order of acquittal and the conviction and sentence imposed by the High Court should be set aside.

[21] Learned DPP on the other hand wholeheartedly supported the

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impugned judgment. According to him, the circumstance relied upon by the prosecution had been accepted by the trial court. They are as follows:

(a) the appellant was last seen with the deceased;

(b) the deceased was crying when the appellant took him away;

(c) the deceased was not comfortable and will always cry when sighted the appellant; and

(d) the deceased suffered from breathing difficulty when the appellant returned him to SP7's house.

FINDINGS OF THIS COURT

[22] In this instant case, there is no dispute that the case for the prosecution is essentially based on the circumstantial evidence. The law on circumstantial evidence is well settled. In a plethora of decisions, the courts in our country have laid down the guidelines for appreciation of evidence in a case of this nature. In *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232, the Federal Court stated that:

> Where circumstantial evidence is the basis of the prosecution case the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused, but in a case tried without a jury the failure by the Court to expressly state this is not fatal and it would suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt (*Jayaraman and Ors v Public Prosecutor* [1982] 2 MLJ 306 at p 310).

[23] In *Magendran a/l Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805 , the Federal Court discussed the status of circumstantial evidence and stated that:

> The entire prosecution case rested on circumstantial evidence ...
>
> The question, therefore, is whether the prosecution proved the guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. ... In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established ...
>
> ... If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt. ... There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused ...

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> ... In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all probability the act must have been done by the accused and the accused alone.

[24] It is clear from the cases cited above that in a case based on circumstantial evidence, the circumstances must unerringly lead to one conclusion consistent only with the hypothesis of the guilt of the accused and every incriminating circumstances must be clearly established by reliable and clinching evidence. Circumstances so proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible.

[25] Coming back to the present case, SP7 testified that the appellant came to the flat and took the deceased away. After 10 minutes, the appellant returned with the deceased. According to SP7, the deceased was having the difficulty breathing and appeared weak. SP7's son, Subramaniam, questioned the appellant about the state of the deceased. Subramaniam suspected the appellant of doing something wrong to the deceased and demanded that he wait in the flat.

[26] Learned DPP submitted that the fact the appellant and the deceased being last seen will complete the chain of circumstances for the court to make a finding that it is consistent only with the hypothesis of the guilt of the appellant.

[27] With respect, we disagree with the submission. The fact that the appellant was last seen with the deceased may have created suspicions of his guilt, but not enough to prove the case against him beyond reasonable doubt. It is trite that last seen evidence does not by itself necessarily leads to an irresistible inference that the appellant committed the crime unless the same is duly supported by other links in the chain of circumstances evidence unerringly pointing out the guilt of the appellant. It should also be noted that the last seen evidence is only relevant evidence to complete the chain of circumstantial evidence; however the conviction cannot be solely based on this piece of evidence. Dealing with the principle of last seen evidence, the Supreme Court of India in *Rishi Pal v State of Uttarakhand* 2013 (2) ACR 147, had this to say:

> 16 In *Mohibur Rahman and Anr v State of Assam* (2002) 6 SCC 715, this Court held that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible

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conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Similarly in *Arjun Marik and Ors v State of Bihar* 1994 Supp (2) SCC 372, this Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v Kuntala Mishra and Another* (1996) 11 SCC 264, this Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In *Bharat v State of MP* (2003) 3 SCC 106; two circumstances on the basis whereof the Appellant had been convicted were (i) the Appellant having been last seen with the deceased and (ii) Recovery of ornaments made at his instance. This Court held: Mere non-explanation cannot lead to the proof of guilt against the Appellant. The prosecution has to prove its case against the Appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the Appellant

20. Suffice it to say that even if we take the most charitable liberal view in favour of the prosecution, all that we get is a suspicion against the Appellant and no more. The High Court was in that view justified in setting aside the order passed by the trial Court and acquitting the Appellant of the offence of murder under Section 302 IPC. The order passed by the High Court deserves to be affirmed giving to the appellant the benefit of doubt. We accordingly dismiss the appeal filed by the appellant and discharge the notice of show-cause issued to him.

[28] In this instant case, the prosecution failed to establish by positive evidence any motive on the part of the appellant to murder the deceased. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstances evidence (see *Yap Boon Thai v Public Prosecutor* [2013] 6 MLJ 236). Absence of motive in this case, therefore, is clearly a matter to be taken into account by the court. In so far as motive is concerned, SP9's evidence was much in favour of the appellant. She said that the appellant and his wife were very fond of the deceased and had expressed their desire to adopt the deceased. SP9 also stated that there were instances in which the appellant had helped her to send the deceased to seek medical treatment at the local clinic. The fact that he rushed the deceased to the clinic would neutralised any suggestion that he personally want the deceased dead.

[29] It was the prosecution's contention that the appellant allegedly stomped on the deceased at Taman Permainan. However, there was no evidence of the appellant's footprints on the deceased's clothing. The police also did not retrieve any soil or bitumen from the crime scene to connect or implicate the appellant.

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[30] In our view, the prosecution's case was hampered with the existence of the DNA belonging to the 'unknown female' found in the deceased's finger nail clippings. There was no attempt by the prosecution to explain the presence of the female DNA profile. Several inferences could be made from the findings of such evidence (see *Public Prosecutor v Hanif Basree bin Abdul Rahman* [2008] 3 MLJ 161)

[31] SP4, during cross-examination, stated that injuries No 10 to No 14 found on the deceased's body were scratch abrasion caused by sharp object consistent with woman nails.

[32] We agree with learned counsel for the appellant that the trial judge misdirected himself when he failed to rule at the end of the prosecution's case that the prosecution had failed to establish a prima facie case against the appellant. The circumstantial evidence relied upon by the prosecution coupled with the presence of female DNA profile, give rise to a reasonable inference that the appellant may not be the perpetrator and a female could have injured the deceased. Furthermore, at any rate the chain of circumstantial evidence in this case is not so complete as to lead to the hypothesis of guilt of the appellant.

[33] Before we conclude, we must say that in dealing with the circumstantial evidence, there is always danger that conjecture or suspicion lingering on mind may take place of proof and therefore the court has to judge watchfully and ensure that the conjecture and suspicion do not take place of legal proof.

CONCLUSION

[34] After taking all the facts and circumstances of this case in consideration, we do not find ourselves in agreement with the findings arrived at by the learned trial judge. The circumstances evidence presented by the prosecution in this case was so lacking that the defence of the appellant should not have been called at the first place; let alone convicted him even after the defence was called.

[35] In the result, we allowed the appeal and set aside the conviction and sentence passed by the High Court. The appellant was acquitted and discharged.

Appeal allowed and setting aside the conviction and sentence set aside.

Reported by Afiq Mohamad Noor